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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DREW MARTIN,

Plaintiff,

vs.

COUNTY OF SAN DIEGO, et al.,

Defendant.

CASE NO. 11cv91-MMA (RBB)

**ORDER GRANTING PLAINTIFF’S
COUNSEL’S MOTION TO BE
RELIEVED AS COUNSEL OF
RECORD**

[Doc. No. 35]

This civil rights action is currently before the Court on the motion of counsel for Plaintiff Drew Martin to withdraw as attorney of record. The motion is unopposed. For the reasons set forth below, the Court **GRANTS** the motion.

An attorney may not withdraw as counsel except by leave of court, *Darby v. City of Torrance*, 810 F. Supp. 275, 276 (C.D. Cal. 1992), and “[t]he decision to grant or deny counsel’s motion to withdraw is committed to the discretion of the trial court.” *LaGrand v. Stewart*, 133 F.3d 1253, 1269 (9th Cir. 1998); *see also* CIV. L.R. 83.3(g)(3). Withdrawal is governed generally by the California Rules of Professional Conduct. *See Nehad v. Mukasey*, 535 F.3d 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct to attorney withdrawal).

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1 An attorney seeking to withdraw must adhere to the requirements of California Rule of
2 Professional Conduct 3-700(A)(2), which provides:

3 A member shall not withdraw from employment until the member has taken reasonable
4 steps to avoid reasonably foreseeable prejudice to the rights of the client, including
5 giving due notice to the client, allowing time for employment of other counsel,
6 complying with Rule 3-700(D) [which addresses the disposition of client papers and
7 property], and complying with applicable laws and rules.

8 In addition to serving Defendants and Plaintiff with the motion, Plaintiff's counsel also provided a
9 courtesy copy to Plaintiff's parents. Plaintiff's counsel has fulfilled the notice requirement of Rule
10 3-700(A)(2).

11 Plaintiff's counsel moves to withdraw based on his client's failure to pay the full amount of
12 fees owed for services rendered and expenses incurred during the course of this litigation. *See*
13 *Rutman Decl'n*, 1-2. California Rule of Professional Conduct 3-700(C)(1)(f) provides that an
14 attorney may request permission to withdraw if the client "breaches an agreement or obligation to
15 the member as to expenses or fees." According to Plaintiff's counsel, his client has been unable to
16 comply with their fee agreement for some time, resulting in Plaintiff's counsel advancing
17 approximately \$6,000 of his own funds to cover expenses related to this litigation. *See Rutman*
18 *Decl'n*, 2-3. Plaintiff's counsel deferred the payment of fees to allow his client additional time to
19 reimburse expenses and comply with the fee agreement, to no avail. *Id.* at 2. On September 12,
20 2011, Plaintiff was arrested on charges of drug possession and distribution, and thereafter entered
21 into a plea agreement which anticipates a seven year stipulated prison term. *Id.* at 3. Plaintiff's
22 ability to comply with the fee agreement or otherwise cover the expense of this litigation is now
23 further constrained due to his incarceration.

24 The Court finds that Plaintiff's counsel has complied with the applicable rules of
25 professional conduct and demonstrated that good cause exists for his withdrawal as attorney of
26 record. Accordingly, the Court **GRANTS** the motion to withdraw, effective as of the date this
27 Order is filed. **The Court advises Plaintiff that he is now proceeding in this matter pro se and**
28 **must provide the Court with his current contact information, including mailing address.**


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1 As soon as practicable, and in compliance with California Rule of Professional Conduct
2 3-700(D), Plaintiff's counsel shall provide Plaintiff with copies of any documents in his possession
3 that Plaintiff may need to litigate his case, as well as a copy of this Order and the Court's Order
4 Providing Notice to *Pro Se* Prisoner of Requirements for Opposing Summary Judgment, to be issued
5 contemporaneously herewith.

6 **IT IS SO ORDERED.**

7 DATED: January 10, 2012



Hon. Michael M. Anello
United States District Judge

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